THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.1229 OF 2006

DATED: 7TH JUNE, 2006.

Between :

Chinda Sudhakar Raju .. Petitioner

And

1. The Tirumala Co-operative Urban Bank Limited and 2 others. .. Respondents

THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.1229 OF 2006

O R D E R :

Heard the learned Counsel for the petitioner and the learned Counsel appearing for the respondents.

It is not in dispute that the writ petitioner availed a loan from the 1st respondent – Tirumala Cooperative Urban Bank Limited under Account SEOD No.32. Alleging that the petitioner committed default in repayment, the 1st respondent Bank filed ARC.No.25 of 2003 before the Co-operative Sub-Registrar-cum-Arbitrator, Hyderabad and the same was decreed. Though the petitioner preferred an appeal, the same was dismissed. Aggrieved by the same, the petitioner filed W.P.No.19672 of 2003 contending that as a matter of fact he had already paid the entire loan amount. The said writ petition was disposed of by this Court with a direction to the Co-operative Tribunal to re-enquire into the matter. It is not in dispute that in compliance with the interim orders granted by this Court during the pendency of this writ petition, the petitioner deposited a sum of Rs.1 lakh (Rupees One Lakh only). The petitioner states that pursuant to the order of this Court the Appeal was re-heard by the Co-operative Tribunal and the orders were reserved. In the meanwhile, the 1st respondent Bank having invoked the provisions under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for

short, 'the Act') published a notice in the local dailies dated 21-1-2006. Apprehending that in pursuance of the said notice he would be dispossessed, the petitioner filed this writ petition seeking a declaration that the action of the respondents in initiating proceedings under the Act is arbitrary and illegal. It is also alleged that the 1st respondent has been taking coercive steps to dispossess the petitioner from the property in question.

In the counter-affidavit filed on behalf of the respondents, it is stated that the loan account has become non-performing asset as per the guidelines of Reserve Bank of India and therefore the respondent Bank issued a notice under Section 13 (2) of the Act on 2-12-2005 calling upon the petitioner to repay the entire amount due. However, the said notice was returned undelivered and therefore the respondent Bank got published demand notice in the newspapers on 21-1-2006.

Be that as it may, a perusal of the impugned notice issued under Section 13 (2) of the Act itself shows that the petitioner was given an opportunity to discharge the liabilities, if any, within the time specified thereunder.

As rightly pointed out by the learned Counsel for the respondents, it is only where the borrower commits default the secured creditor will proceed further for sale of secured assets under Section 13 (4) of the Act.

In the case on hand, since the petitioner pleads that as a matter of fact he has already paid the entire amount due to the 1st respondent Bank, it is always open to him to make an appropriate representation to the respondents 1 and 2 bringing to their notice the said fact and also to place the relevant material to substantiate the said plea. Since no steps under Section 13 (4) of the Act have yet been initiated, the

apprehension of the petitioner is baseless and the writ petition itself appears to be premature.

Accordingly, the Writ Petition is disposed of granting liberty to the petitioner to make an appropriate representation within two weeks from today, in which event the respondents shall consider the same and pass appropriate orders in accordance with law. It is made clear that the respondents shall not interfere with the possession of the property in question without following the due procedure prescribed under the provisions of the Act and the Rules made thereunder. No costs.

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G. ROHINI, J

Dt. 7-6-2006
Note:- CC in 2 days.
(B/O)
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